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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.W. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

THERESA L.,

Defendant and Appellant.

D062086

(Super. Ct. No. J518360A-D)

APPEAL from an order of the Superior Court of San Diego County, David B.  
Oberholzer, Judge. Affirmed.

Theresa L. appeals an order terminating her Probate Code guardianship of her  
granddaughters M.W., Michelle W., H.H. and N.H. (together the children). Theresa

contends the juvenile court erred by terminating the guardianship (Welf. & Inst. Code, § 728)<sup>1</sup> and denying her reunification services. We affirm.

## BACKGROUND

Theresa has a child welfare history, dating from 1984, regarding her children and grandchildren. She refused voluntary services seven times and did not reunify with four of her children.

The children's mother, Brenda W., used drugs and engaged in prostitution. In May 2003, the probate court appointed Theresa as guardian of four-year-old M.W. and one-year-old Michelle. In July 2010, the probate court appointed Theresa as guardian of six-year-old H.H. and four-year-old N.H. Brenda and other relatives lived with Theresa and the children.

In August 2011, Theresa was convicted of selling prescription medications and other crimes. In September, the superior court placed her on three years' probation. On November 15, there was a substantiated child welfare referral regarding Theresa. She and the children were homeless. The school gave Theresa food and clothing, but the children came to school hungry and in filthy clothes. Often the clothes did not fit. The children had an unpleasant odor and other students did not want to sit near them. The children asked for extra helpings during school breakfasts and lunches. They stole and hoarded food. The children were often late to school and did not complete their

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

homework. They struggled in school. H.H. lost her eyeglasses, and they were not replaced.

Theresa did not appear for a guardianship review hearing on November 22, 2011, and there was an inconclusive child welfare referral.<sup>2</sup> According to the referral, "the superior court<sup>3</sup> [would] not allow [Theresa] to take the children out of San Diego County," but she said "she would take [them] to Kansas if she [could] not keep [them]."

In January 2012, there was another substantiated referral. N.H. was at a hospital receiving treatment for dermatomyositis, a chronic inflammatory condition of the skin and muscles. M.W. and maternal uncle Casey P. were also in the room. Casey grabbed M.W. by the hair and pushed her, then M.W. pushed Casey. During an investigation, N.H. said she was scared during the altercation. She said Theresa whipped her with a belt and "it happened now." N.H. said Theresa hit the other children with a big, thick belt and "they get hit with their pants down." N.H.'s clothes were clean, but she had "a slight dirty/body odor." M.W. appeared clean, although she said Theresa did the laundry only once a month. M.W. "[d]enied all abuse or neglect" and said the children "only get slapped or spanked on the leg sometimes."

H.H.'s clothes were dirty and stained and her shoes were too big. She had an "overpowering" odor of dirt and sweat. She said she wore her clothes "a lot more than

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<sup>2</sup> An inconclusive referral is one "that is determined by the investigator . . . not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect . . . has occurred." (Pen. Code, § 11165.12, subd. (c).)

<sup>3</sup> This appears to be a reference to the probate court.

one time before they [were] washed," and it had been a long time since Theresa had done the laundry. H.H. had injuries on the back of her neck that "looked like wide fingernail scratches." The injuries were two to three inches long and covered with scabs. H.H. explained that Theresa was mad and "grabbed her fast and hard on the back of the neck" "on purpose." A doctor said the injuries were consistent with H.H.'s statement. H.H. said Theresa "hits her with a metal comb." Brenda hit H.H. with a belt, and H.H. "was whooped hard on her legs and her butt." H.H. said "her pants are down when she gets whoopins." H.H. saw Theresa and a stepgrandfather "fight with closed fists." Theresa and Brenda also fought with their fists. H.H. said she ate breakfast and lunch at school, and sometimes went to bed hungry.

Michelle's clothes were dirty. Her pants were so tight it was painful to sit. Michelle said Theresa hit her with a belt on January 20, 2012. Michelle "said she had been whooped because she wanted to trade clothes with [H.H.] because her pants were too tight. [Michelle] then retracted and told [the social worker] that she would get into trouble for telling [the social worker] that she got a whoopin." Michelle said she wished "to have a different life."

The children's older brother, a ward of the juvenile delinquency court, said Theresa did the laundry only after all the clothes were dirty. The children "were being teased at school because the kids thought they were smelly." Casey put H.H. in a dark bathroom until she cried, and refused to let her out. H.H. was "picked on" and Casey hit the children. When the brother complained to Theresa, "she told him to stay out of adult business."

Attendance records showed Michelle, H.H. and N.H. had been late to school more than 12 times each between September 2011 and January 21, 2012. A school employee said Theresa and the children appeared unkempt. School personnel had spoken with Theresa many times about the children's hygiene and had given her bus tokens. Michelle had an Individualized Educational Program (IEP) for an auditory and visual processing problem. H.H. had an IEP for a speech and learning disability.

Theresa missed several of N.H.'s appointments at the rheumatology clinic. Theresa was "mostly compliant with [the clinic's] recommendations," but ignored an April 2011 recommendation that N.H. receive physical therapy for leg stiffness and weakness.

Theresa said she received \$914 per month in Supplemental Security Income (SSI) for herself and \$767 each for H.H. and N.H. Theresa also received an unspecified amount of welfare and food assistance. The family lived in hotels and moved frequently. The children accompanied Theresa when she gambled at casinos. They ate at the casinos' buffets. Theresa admitted she spanked the children but claimed she left no marks. She denied all allegations of child abuse, and claimed school and medical personnel were lying. Theresa refused to provide additional information and largely avoided the social workers who sought to interview her.

By February 21, 2012, Theresa had missed three guardianship review hearings. That day, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for 13-year-old M.W., nine-year-old Michelle, eight-year-old H.H. and five-year-old N.H. (§ 300, subds. (a), (b) & (j).) The petitions alleged that beginning

in November 2011, the children came to school hungry and in dirty clothes. Other students would not sit next to them because of their body odor. In August, Theresa was convicted of selling prescription drugs. She did not obtain treatment for N.H.'s dermatomyositis. Theresa, Brenda and an uncle hit the children. Theresa hit H.H. with a belt and scratched her back. Brenda hit the three youngest children with a belt. Casey hit the three youngest children with a closed fist, put them in a dark bathroom until they cried, and refused to let them out. Theresa said if she lost custody of the children, she would take them to Kansas. She did not cooperate with the Agency's investigation, and the children's address was unknown.

On February 21, 2012, the court ordered the issuance of a protective custody warrant for the children. The children were detained at Polinsky Children's Center (Polinsky). On February 23, the children's counsel asked the court to deny Theresa visitation, saying the children did not want visits. The court granted the request.

After a short time at Polinsky, the children were moved to foster homes. Theresa telephoned the children and said "she would be coming to get them." She told them to disobey their foster parents and not go to school. The children's behavioral problems necessitated further moves and psychotherapy. Theresa refused to give the Agency N.H.'s prescription medication, even when the court ordered her to do so. Theresa attempted to continue receiving H.H.'s and N.H.'s SSI payments by falsely claiming they were living with her. On February 27, 2012, Theresa filed a section 388 petition

challenging the detention order. At an evidentiary hearing on February 29, the court denied the petition.<sup>4</sup>

On March 14, 2012, the Agency filed a motion to terminate the guardianship (§ 728). The hearing on the motion, and the jurisdictional and dispositional hearing, took place on May 29.

M.W. and Michelle testified in chambers that Theresa hit them and their sisters with her hand and a belt. Theresa hit H.H. more than she hit the other children. Michelle testified it was painful to be hit with a belt. She saw Theresa scratch H.H. with her fingernail. M.W. testified that Brenda hit her, and Casey hit her and H.H.

Theresa testified that none of the child welfare referrals was substantiated. She never hit the children with a belt or a metal comb. She hit H.H. on the legs with her hands because H.H. urinated on herself on purpose. Theresa did not cause the scratches on H.H.'s neck and never hit the other children. Casey never hit the children in Theresa's presence, and the children's brother never told Theresa that Casey hit the children. Theresa stopped Brenda from hitting the children.

M.W. testified that an uncle shut H.H. in the bathroom with the light off, for five to 15 minutes, and H.H. cried. Theresa testified she was unaware of that. Michelle testified she was punished by confinement in the bathroom, in the dark, for 20 seconds.

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<sup>4</sup> On February 29, 2012, the court "reaffirm[ed] the fact that there is a no-contact order between [Theresa] and the children." The previous order did not prohibit contact; it prohibited visits.

M.W. testified she was sometimes late to school because the car was out of gas and she had to take the bus or walk. She testified she never did her homework, sometimes Michelle did not do her homework and sometimes H.H. did not turn in her homework. When M.W. did not do her homework, the school called Theresa, and Theresa told M.W. to do her homework. M.W. also testified she and her sisters did their homework and Theresa and others checked it. Michelle and Theresa testified the children did their homework. Theresa testified she checked the homework. She informed the teacher, principal and IEP personnel when H.H. did not turn in her homework. Over a period of approximately one year, each time Theresa bought H.H. new glasses, H.H. lost them at school. She lost her glasses three times in one month. Theresa denied Michelle had an IEP.

Theresa testified the children were late to school because they had medical appointments. She took N.H. to appointments for her dermatomyositis twice a week or twice a month, and made sure N.H. took her medication. Theresa never took N.H. to physical therapy; the doctor merely said "it was there, if [N.H.] needed it." Theresa denied having missed guardianship hearings, and said she filed a status report late because the court did not give her notice.

M.W. testified she did not like breakfast, but there was food available and her sisters ate breakfast at home. She never went to bed hungry. Michelle testified she always ate breakfast, either at home or at school. Theresa made pancakes for breakfast. Brenda made dinner, and Michelle always ate dinner. Theresa testified the children ate



breakfast every day, at home, at McDonald's or at school, and did not go to school hungry.

M.W. and Michelle testified they showered twice daily. M.W. testified Theresa did the laundry regularly. H.H. wore dirty clothes and went to school dirty, but the other children did not. Michelle testified she changed her clothes every day and wore clean clothes to school. Theresa testified she did the laundry three times a month, the children had plenty of clothes and they always wore clean clothes to school. The children showered every morning and bathed every night and were always clean when they went to school.

M.W. testified that before the children were detained, Theresa said they were going to move to Kansas "after all this is done with." Theresa testified the probate court said she could leave California with the children. M.W. testified she missed living with Theresa, felt safe with her and wanted to maintain contact. M.W. wanted to live with Brenda or, alternatively, with Theresa. Michelle testified she sometimes felt unsafe with Theresa, and wanted to live with Brenda because she would not hit the children with a belt. Michelle also testified she sometimes missed living with Theresa because she missed having pancakes, and she wanted to live with Theresa.

In closing argument, Theresa's counsel requested, for the first time, "that the court . . . offer reunification services to [Theresa]." There was no further mention of services, and the court did not rule on the request. The court found, by clear and convincing evidence, that termination of the guardianship was in the children's best interests because Theresa used corporal punishment and did not make adequate

arrangements for the children's education. The court terminated the guardianship. The court made true findings on the dependency petitions and ordered the children removed from the custody of their parents<sup>5</sup> and Theresa and placed in foster care. The court gave the Agency discretion to allow Theresa supervised visits, with notice to the children's counsel, and to prohibit contact.

## DISCUSSION

"The juvenile court may terminate . . . a guardianship of the person of a minor . . . established under the Probate Code . . . if the minor is the subject of a petition filed under Section 300" (§ 728, subd. (a)) and there is clear and convincing evidence that termination is in the child's best interests (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 254; *In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1413). "The sole criterion for termination of a probate guardianship is whether termination is in the minor's best interests. [Citation.] We review a juvenile court's order terminating a probate guardianship under the substantial evidence standard. (*In re Merrick V.*, at p. 254.) This means, among other things, that we resolve all evidentiary disputes in favor of the court's rulings and draw all reasonable inferences to support them. [Citation.] Viewing the evidence most favorably to the judgment, as we must do under the substantial evidence standard, the juvenile court's order is amply supported." (*In re Xavier R.*, at p. 1416.)

The court found M.W. and Michelle credible. The court cited the discrepancies between Theresa's testimony on the one hand, and M.W.'s and Michelle's testimonies and

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<sup>5</sup> The court ordered services for the children's parents.

the Agency's reports on the other hand. "We do not second-guess the court's credibility calls or reweigh the evidence." (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 254.) The Agency's reports and M.W.'s and Michelle's testimonies constitute substantial evidence to support the court's findings that Theresa used corporal punishment and did not make adequate arrangements for the children's education. Those findings support the court's conclusion that terminating the guardianship was in the children's best interests. Additionally, there was evidence of serious deficits in Theresa's care of the children in other areas, and she was unrepentant.

Theresa argues she is the only alternative to long-term foster care for the children, their relationship is important and "[n]o possible benefit can accrue to the children in failing to grant Theresa services . . . ." "[S]ection 728 . . . gives the juvenile court the authority to terminate a Probate Code guardianship at any stage in the dependency proceeding, including at the detention hearing or the jurisdictional hearing." (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 253.) "[A] predependency or Probate Code guardianship may legally be terminated before reunification services are offered to the guardian." (*Ibid.*) The court was not required to order reunification services. Moreover, the true findings in this case included physical abuse. Theresa did not cooperate with the social workers in this case and has a substantial history of child abuse and neglect.

DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.